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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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CHAD R. CARMICHAEL,  
*Complainant,*

v.

BD. OF TRUSTEES OF HAMILTON SOUTHEAST-  
ERN SCHOOLS,  
*Respondent.*

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Formal Complaint No.  
21-FC-73

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Luke H. Britt  
Public Access Counselor

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This advisory opinion is in response to a formal complaint alleging the Board of Trustees of Hamilton Southeastern Schools violated the Open Door Law.<sup>1</sup> Attorney Alexander Pinegar filed an answer on behalf of HSE. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on June 10, 2021.

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<sup>1</sup> Ind. Code § 5-14-1.5-1-8.

## **BACKGROUND**

In this case we consider whether a school board can, consistent with the Open Door Law, require the public to pre-register as a condition of attending a public meeting.

On June 9, 2021, the Board of Trustees of Hamilton Southeastern Schools (Board) held a regularly scheduled public meeting. At the time of the meeting, HSE required anyone interested in attending to preregister on the school district's website. The first 72 people registered would have a seat at the school board meeting. Preregistration opened for the meeting in question at noon on June 7, 2021. It closed at 8:00 a.m. on the day of the meeting.

On the night of the meeting, HSE denied Chad Carmichael (Complainant) entry to the school board meeting.

Carmichael did not preregister to attend the meeting.

The next day, Carmichael filed a formal complaint alleging the HSE Board's preregistration requirement violated the Open Door Law.

Carmichael contends that an HSE official informed him that preregistration was a new COVID-related safety requirement. Carmichael asserts that HSE did not require masks or social distancing at the meeting. Carmichael also maintains that other meeting attendees were told that the registration was not related to COVID-19 safety protocols.

On July 30, 2021, the HSE Board filed an answer to Carmichael's formal complaint denying any violation of the Open Door Law.

The HSE Board argues that it implemented the preregistration requirement as a separation measure to minimize COVID-19 risks in accordance with Governor Holcomb's Executive Order 21-12 and guidance issued by this office. The Board asserts the preregistration requirement was reasonable and warranted to prevent overcrowding at the meeting..

## ANALYSIS

### 1. The Open Door Law

The Open Door Law (ODL) requires public agencies to conduct and take official action openly, unless otherwise expressly provided by statute, so the people may be fully informed. Ind. Code § 5-14-1.5-1. As a result, the ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. *See* Ind. Code § 5-14-1.5-3(a).

Hamilton Southeastern Schools is a public agency for purposes of the ODL; and thus, is subject to the law's requirements. Ind. Code § 5-14-1.5-2. Moreover, the HSE Board is a governing body for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b).

As a result, unless an exception applies, all meetings of the school board must be open at all times to allow members of the public to observe and record.

## **1.1 ODL definitions**

Under the ODL, “meeting” means “a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business.” Ind. Code § 5-14-1.5-2(c).

“Official action” means to: (1) receive information; (2) deliberate; (3) make recommendations; (4) establish policy; (5) make decisions; or (6) take final action. Ind. Code § 5-14-1.5-2(d). Notably, the ODL defines “final action” as “a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance or order.” Ind. Code § 5-14-1.5-2(g). The ODL also mandates a governing body to take all final action at public meeting. *See* Ind. Code § 5-14-1.5-6.1(c). Additionally, “public business” means “any function upon which the public agency is empowered or authorized to take official action.” Ind. Code § 5-14-1.5-2(e).

## **2. Carmichael’s claims**

### **2.1 Open Door Law violation**

Carmichael contends the HSE Board violated the Open Door Law by denying him entry to a public meeting because he did not preregister as required by the Board. The Board does not dispute Carmichael’s claim. Instead, the Board argues preregistration was necessary to prevent overcrowding to minimize COVID-19 risks.

Indeed, due to COVID-related concerns, the HSE Board—like many others—adopted protocols to protect the health and safety of board members and meeting participants. Capacity caps, virtual meetings, and other reasonable restrictions have become commonplace, and rightfully so.

This office does not intend to curb creativity when it comes to addressing COVID-related challenges so long as that creativity does not become a barrier to access.

In this case, the question is whether preregistration is permissible and reasonable considering the current circumstances. After review, this office does not ratify this procedure.

Based on the information provided, this office cannot agree that the preregistration process operated as an appropriate separation measure aimed at preventing overcrowding at a public meeting in light of COVID-19 risks.

First, by the HSE Board's own admission, the meeting room's capacity has historically been more than adequate for public meetings. The Board also asserted that within HSE's collective memory there has been perhaps five meetings in the last several years where a crowd showed up that exceeded capacity.

Second, the Board confirmed Carmichael's claim that HSE did not require masks or social distancing for those allowed to attend the meeting. In context, this cuts against the Board's argument that preregistration process was a necessary separation measure to minimize risk.

Third, the HSE Board concedes that Carmichael could have attended the meeting if he had simply followed the registration process and showed up five minutes before the meeting started, which is when HSE locked the doors. This coupled with the video of the meeting suggest there was, at minimum, space for Carmichael to observe the meeting.

Although it does not appear to be the case in the current situation, preregistering attendees could present significant abuses and barriers to the public's right to observe and record a meeting. Attendance lists could be curated to populate the list with individuals sympathetic to a cause or to exclude those with opposing views.

Simply put, the Open Door Law does not contemplate registration as a condition precedent to attendance. It is not specifically prohibited although other states' open meetings laws do prohibit the practice.<sup>2</sup> Interested individuals should be able to just show up to an open meeting without any advanced RSVP.

While it is often logistically challenging to physically turn away attendees at the door, attendees should be granted access in the order in which they arrive.

As a final aside, it is the understanding of this office that HSE no longer requires preregistration to attend school board meetings. Undoubtedly, this is the better approach.

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<sup>2</sup> E.g. Michigan Compiled Law 15.263 (4)

## **CONCLUSION**

Based on the foregoing, it is the opinion of this office that the Board of Trustees for Hamilton Southeastern Schools' preregistration requirement constitutes noncompliance with the Open Door Law.

This office commends the board for discontinuing the preregistration requirement.

A handwritten signature in black ink, appearing to read 'LHB', is positioned to the right of the text.

Luke H. Britt  
Public Access Counselor